



**MULTISTATE TAX COMMISSION**

**MINUTES of  
Sales and Use Tax Subcommittee Meeting  
Wednesday, March 12, 2014  
8:30 a.m. Mountain Time**

**I. Welcome and Introductions**

Richard Cram, Chair of the Sales and Use Tax Subcommittee, (KS) opened the meeting. The following persons were in attendance:

Lennie Collins	North Carolina Department of Revenue	Chris Sherlock	Alabama Department of Revenue
Derek Bell	Montana Department of Revenue	Holly Coon	
Lee Baerlocher		Kelly Gillikin	
Gene Walborn		Stewart Binke	Michigan Department of Treasury
Matt Peyrl	North Dakota Office of State Tax Commissioner	Chris Coffman	Washington State Department of Revenue
Myles Vosberg		Scott Garrison	
R. Jay Frost	Louisiana Department of Revenue	Karolyn Bishop	
Richard Cram	Kansas Department of Revenue	John Ryser	
Aaishah Hashmii	DC Office of Tax and Revenue	Thomas Shimkin	Multistate Tax Commission
Phillip Horwitz	Colorado Department of Revenue	Ben Abalos	
Erica Hoxeny		Ken Beier	
Wood Miller	Missouri Department of Revenue	Roxanne Bland	
Jeremiah Morgan		Sheldon Laskin	

David M. Ferguson	New Mexico Taxation & Revenue	Steve Yang	
Frank Hales	Utah State Tax Commission	Bruce Fort	
Bill von Tagen	Idaho Office of the Attorney General	Lila Disque	
Richard W. Jackson	Idaho State Tax Commission	Helen Hecht	Federation of Tax Administrators
Steve Wynn		Jim Eads	Ryan
Randy Tilley		Greg Turner	Council on State Taxation
		Todd Lard	Sutherland Asbill & Brennan
		Tripp Baltz	Bloomberg BNA
		Deborah Bierbaum	AT&T

**II. Approval of Minutes of In-person Meeting, December 11, 2013**

The minutes of the December 11 meeting were approved by unanimous voice vote

**III. Public Comment Period**

There were no comments.

**IV. Reports and Updates**

**a. Federal Issues Affecting State Taxation**

**1. S. 31, H.R. 434, Permanent Internet Tax Freedom Act**

Makes permanent the prohibition on state taxation of Internet access fees. The current moratorium expires November 1, 2014. Introduced by Sen. Ayotte, (R-NH) Rep. Chabot (R-OH). This bill originated in the Senate Finance Committee. Max Baucus has been confirmed as US Ambassador to China, so Sen. Ron Widen will be the new chair. Senator Wyden, who has never been particularly supportive of the states in tax matters. He was the primary sponsor of ITFA back in 1998, and is the co-sponsor of this bill. It will likely be attached to the MFA in the House.

**2. S. 743, H.R. 684, Marketplace Fairness Act**

Ratifies the Streamlined Sales and Use Tax Agreement. For those states that are not members of SST, provides a set of criteria to simplify their sales and use taxes that once met, allows them to require tax collection by remote sellers. S. 743 introduced April 16, 2013, by Senator Enzi (R-WY). S. 336 (laid aside) introduced February 14, 2013. H.R. 684 introduced February 14, 2013, Rep. Womack (R-AR). Passed the Senate on May 6, 2013. On September 18, 2013, Rep. Goodlatte (R-VA). Chair of the House Judiciary Committee, issued a list of seven basic principles which have been characterized as a starting point for discussions to resolve the issue.

**3. S.1235, H.R. 2309, Wireless Tax Fairness Act**

Prohibits states or local governments from imposing any new discriminatory tax on mobile services, mobile service providers, or mobile service property for five years after the enactment of this Act. Defines "new discriminatory tax" as a tax imposed on mobile services, providers, or property that is not generally imposed on other types of services, providers or property, or that is generally imposed on others at a lower rate. "Principles" of the 4-R Act apply to any allegedly discriminatory treatment, including redress in federal courts. House and Senate bills are identical. Sponsors: Rep. Zoe Lofgren, D-CA and Sen. Ron Wyden, D-OR.

**4. S. 1364, H.R. 3724, Digital Goods and Services Tax Fairness Act**

Prohibits multiple or discriminatory taxes on or with respect to the sale or use of digital goods or digital services. Taxes on or with respect to sales of digital goods and services may only be imposed on the sale to a customer. Such taxes may only be imposed on and collected only from a customer or a seller. Taxes may be imposed only by the state and local jurisdictions whose territorial limits encompass the customer's tax address. For multiple locations, seller may determine customer's tax address or addresses as provided by the customer. Seller relying in good faith on address or addresses provided by customer shall be held harmless for any additional tax based on a determination of a different address. Bundling: digital goods and services bundled with other goods and services may be taxed at the same rate as the other goods and services unless seller can reasonably identify charges for digital goods and services from records kept in the regular course of business.

**5. H.R. 2543, End Discriminatory State Tax on Automobile Rentals Act**

A 4-R Act-like bill that prospectively prohibits discriminatory taxes against the rental of motor vehicles, the business of renting motor vehicles, and the motor vehicle property. Provides for federal district court jurisdiction for violations of the Act. Sponsor: Rep. Steve Cohen, (R-TN).

**V. Sales Tax Nexus Model Statute**

**a. Presentation of Draft Model Statute**

Mr. Cram, Chair of the workgroup in charge of the model statute, presented. The model is one document, but provides two options depending on whether the state's sales tax statute functions both as a sales and use tax. Therefore, some varied language is required, chiefly the introductory phrasing. The focus was on nexus dealing with remote sellers, and most of the recent work on this has involved reworking Paragraph B. The plan is to have a draft to recommend to the subcommittee for approval, and he believes the workgroup is close to this final draft.

**b. Public Comment**

There were no comments.

**c. Committee Discussion**

Phil Horwitz (CO) stated Paragraph (b) is superior to its previous iterations. However, (b)(4) contains nothing with respect to people who are doing anything by agreement and who are not related parties. This scenario was acknowledged in a number of Colorado bills introduced this year and last. By way of example, he mentioned the *Dell* situation, which involved third-party extended service agreements. Because the service pro-

viders were not a "related party," they would not be covered under B(4). Mr. Cram stated the workgroup felt this would fall into the "independent contractor" language. This was written specifically to be broader than the *Dell* situation, in order to cover *Scholar-tic Book*-type situations.

Michael Fatale (MA) felt the model would work better with separate "sales tax" and "use tax" drafts. Under (b) on the first page, he recommended removing the reference to federal law. Sheldon Laskin, MTC counsel, recalled this language was intended to cover an MFA-type federal statute. Pat Calore (MI) asked whether, if by deleting the language after "Commerce Clause of the Constitution," it would be more clearly a nexus statute. Mr. Horwitz objected to the term "nexus," but recommended language such as "including any federal law that is passed that allows the state to assert jurisdiction." He simply feels the use of the term "nexus" is not ideal, and they should instead refer to assertion of jurisdiction. He asked for clarification of the goal of the model, and whether it can be accomplished without the "federal law permits" language. Mr. Laskin agreed that this would be consistent with the goal of the model. Mr. Horwitz also recommended calling it a "model doing business statute" rather than a "model nexus statute."

Mr. Fatale clarified the group wants the statute to contemplate the circumstance of vendors that may collect under federal law but aren't considered vendors under state law. He would remove it from the jurisdiction/nexus provision and insert it as Clause F.

Ms. Calore encouraged leaving the model as broad as possible for the sake of revenue departments, since it is difficult to get statutes passed that come from an administrative department. She noted that if they are going to take the commerce clause reference out, they might want to eliminate the word "substantial" in front of "nexus."

## **VI. Model Provisions Concerning Class Actions and False Claims**

### **a. Presentation of Updated Issues List**

Mr. Cram started with Issue 5. The states need to come up with provisions to minimize the seller's risk of consumer lawsuits to the extent they are able. On Issue 6, the workgroup consensus was that based on input from others they should move forward. Regarding appropriate scope, the group is still debating focusing on drafting carve-out language and how broad it should be. States have been dealing with a large amount of nuisance-type class actions, involving false claims acts against retailers for very minor infractions, followed by a settlement. The issue is to come up with carve-out language states could use to make it clear that if the false claims deals with certain kind of tax claims, that would be outside the scope of the statute. The workgroup was in agreement that the primary focus is on the nuisance-type lawsuits.

### **b. Public Comment**

There were no comments.

### **c. Committee Discussion**

Bruce Fort, MTC counsel, warned broadening the scope would extend beyond known problems into "unknown unknowns." Deborah Bierbaum (AT&T) pointed out this could also inadvertently extend it into different types of taxes. Mr. Horwitz pointed out that false claims acts involving income and like taxes are also constrained by the amount of

knowledge a whistleblower could reasonably have as there is no equivalent of a consumer in the income tax context. Ms. Bierbaum noted at the federal level they insert a separate provision for whistleblower statutes that puts more control with the IRS. So she recommends exploring what the federal government is doing and their logic behind it. Mr. Laskin noted there must be an avenue to address legitimate complaints. Mr. Horwitz asked whether this would involve some sort of "payment back to the whistleblower" modeled on federal law; the concern here is that they are removing the class action option. Mr. Laskin noted that it might, and might also take into consideration any fault on the part of the whistleblower. He asked whether the committee currently planned to make a recommendation or provide direction to the workgroup. Mr. Horwitz did not; he simply wanted these issues to be considered.

**VII. Project on State Requirements Under The Marketplace Fairness Act**

**a. Presentation of Activity Report**

Lila Disque, MTC counsel, provided some background on the project and an update of the progress to date. The workgroup has outlined the MFA's simplification requirements; researched and compiled laws from SSUTA-compliant states; and has created a checklist summarizing the measures to be drafted, their respective priorities, and issues that have arisen in the process. However, it is unclear what the House intends to do; rumor is that it intends to fully redraft the bill.

**b. Public Comment**

There was no public comment

**c. Committee Discussion**

Given that the workgroup has very little idea where the bill will go, the committee had no input at this time.

**VIII. New Business**

There was no new business.

**IX. Adjourn**